

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

CORT POYNER, et al.,

Defendants.

No. C 06-06003 CW

ORDER DENYING THIRD
REQUEST TO EXTEND
TEMPORARY
CONTINUANCE OF
HEARING FOR CONTEMPT
AND SETTING DATE FOR
CONTEMPT HEARING

On June 3, 2009, Plaintiff Securities and Exchange Commission filed a motion for an order of civil contempt against Defendant Cort L. Poyner. An evidentiary hearing on the motion was set for December 4, 2009. On December 3, 2009 and January 15, 2010, the Court granted Mr. Poyner's requests to continue the hearing based upon the declarations of Thomas J. LoSavio, his attorney, and Marcie McNeely, who has power of attorney for Mr. Poyner, indicating that he was hospitalized and in critical condition. In the January 15, 2010 Order, the Court ordered Mr. LoSavio to file a report from Mr. Poyner's treating physician or physicians regarding his medical condition by February 16, 2010.

On February 16, 2010, Mr. LoSavio filed a declaration requesting a third continuance. Plaintiff opposes the continuance and requests that a hearing date be set with deadlines for discovery. For the reasons stated below, the Court denies Mr. LoSavio's request for a third continuance and sets a new date for the evidentiary hearing.

1 Mr. LoSavio failed to follow the Court's order to file reports
2 from Mr. Poyner's physician or physicians. Instead, he submits
3 another declaration from Ms. McNeely who states that Mr. Poyner was
4 released from the hospital on February 12, 2010, but will require
5 in-home nursing care and monitoring for the next six weeks due to
6 treatment for complications from his transplanted kidney. Ms.
7 McNeely also declares that Mr. Poyner recently suffered two strokes
8 which rendered him unable to control much of the right side of his
9 body such that he is unable to speak clearly or walk without
10 assistance. She also states that Mr. Poyner was in the hospital
11 from October 14 to December 14, 2009 for emergency surgery to
12 replace a heart valve and was readmitted on January 5, 2010, for
13 possible pneumonia.

14 Mr. LoSavio also files a letter dated February 11, 2010 from
15 Nancy Johnson, Registered Nurse and Clinical Director of the Kidney
16 and Pancreas Transplant Institute. Ms. Johnson states that Mr.
17 Poyner had been hospitalized since January 29, 2010 for a severe
18 kidney rejection and has been responding well to the current
19 treatment. Although Ms. Johnson's letter supplies some
20 corroboration of Ms. McNeely's description of Mr. Poyner's poor
21 health, it fails to corroborate all of the medical problems Ms.
22 McNeely describes.

23 Plaintiff correctly concludes that the evidence submitted
24 indicates that Mr. Poyner is out of the hospital, fails to provide
25 a specific prognosis and does not indicate that he cannot provide
26 deposition testimony if the deposition is taken near his home.

27 Therefore, the Court grants Plaintiff's request to set a new
28 date for an evidentiary hearing. The hearing date is May 11, 2010

1 at 9 a.m. Mr. Poyner is ordered to notice and complete, at least
2 two weeks before the hearing, all depositions that he will use at
3 the evidentiary hearing. Mr. Poyner also is ordered to provide to
4 Plaintiff, at least two weeks before the date of the hearing,
5 copies of any hearing exhibits, including financial information and
6 explanations for cash transfers that the Court previously ordered.
7 Plaintiff must provide Mr. Poyner with copies of its exhibits, at
8 least two weeks before the date of the hearing.

9
10 IT IS SO ORDERED.

11
12 Dated: March 2, 2010

Claudia Wilken

CLAUDIA WILKEN
United States District Judge